

IN THE UNITED STATES BANKRUPTCY
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE DEBTORS: GUARANTY FINANCIAL, BJH
BANKRUPTCY PETITION NUMBER: 09-35582-bjh11

HEARING ON
MOTION TO APPROVE CLAIMS INVESTIGATION STIPULATION
HEARING DATE 12/01/09

TRANSCRIPT FROM AUDIO RECORDING

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JUDGE PRESIDING:

HON. BARBARA J. HOUSER

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PROCEEDINGS

THE COURT: All right. We have two matters. Let me take time estimates. Guaranty Financial.

MR. PECK: Good afternoon, Your Honor.
(Inaudible)

THE COURT: All right. Come ahead, please.

MR. PECK: Good afternoon, Your Honor. Ian Peck for the debtors. I am here with Mr. Dennis Faulkner, the CRO.

THE COURT: All right.

MR. WARNER: Afternoon, Your Honor, Michael Warner, Warner, Stevens, on behalf of Wilmington Trust as their local counsel. On the telephone is Mr. Spelfogel of the Foley & Lardner firm in New York who is lead counsel. And I also want to point out that Mr. Smalari (phon) is in the courtroom here in the second row from Wilmington.

THE COURT: All right. Very well.

MR. LEWIS: Your Honor, good afternoon. Peter Lewis of Adorno, Yoss, White, Wiggins, here as local counsel for the FDIC as receiver. I think you should have on the phone Mr. Steven Soll of the Otterbourg firm. I believe he is on the phone as well right now.

1 THE COURT: Not yet but --

2 MR. LEWIS: Well, he will be, very good.

3 Thank you, Your Honor.

4 THE COURT: Thank you.

5 (Making a phone call).

6 THE COURT: Good afternoon. This is Judge
7 Houser. Do I have parties on the line?

8 MR. SOLL: Yes, you do, Your Honor. This
9 is Steven Soll from Otterbourg Steindler, on behalf of
10 the FDIC. And on our line as well is Jeff Cymbler from
11 our office. And Doug Spelfogel will introduce himself.
12 He is on the line as well.

13 MR. SPELFOGEL: Good afternoon, Your Honor,
14 Doug Spelfogel, Foley Lardner, on behalf of Wilmington
15 Trust.

16 THE COURT: Excellent. All right.
17 Mr. Peck.

18 MR. PECK: Yes, Your Honor. We just have
19 one item on the agenda today. That is our motion to
20 approve the claims investigation stipulation among the
21 debtors, the FDIC and Wilmington Trust. We filed this
22 motion on regular notice. No objections were received.
23 The US trustee's office is also on board.

24 Our two largest creditors or potential
25 creditors are Wilmington Trust as trustee for our debt

1 holders and the FDIC as receiver for Guaranty Bank.

2 They are both parties to the stipulation.

3 I understand the Court has another matter
4 set, so I can either provide you some behind the scenes
5 background info or, if you would like to streamline the
6 process, I am happy to jump to whatever questions the
7 Court may have.

8 THE COURT: I have reviewed this. I have
9 really no questions about it. And I take it everyone
10 that is involved in the case is either party to it or
11 has signed off on it, in the case of US Trustee; is that
12 right?

13 MR. PECK: That's correct, Your Honor.

14 THE COURT: Very well. Then I will sign
15 that stipulation.

16 MR. PECK: Thank you, Your Honor.

17 MR. SOLL: Your Honor, this is Steven Soll.
18 If I may raise one particular item in connection with
19 the stipulation. We certainly support it. We signed
20 it.

21 THE COURT: Yes.

22 MR. SOLL: I wanted to raise with the Court
23 the fact that, when the case was first filed, the debtor
24 filed a motion and the Court entered an order approving
25 the transfer of certain bank accounts that were then at

1 Guaranty Bank over to Bank of America, and it was a
2 consensual stipulation, and the order was entered. It
3 is known as the 345 order.

4 In that order was a deadline for the FDIC
5 to assert challenges to the transfer of funds, and the
6 deadline is September 24th and was pegged to the fact
7 that it was then the intention of the CRO to potentially
8 file a plan by the end of this calendar year.

9 Under the stipulation that the Court has
10 just indicated it would approve today, that deadline has
11 been moved -- for filing the plan was moved back until
12 late March, which the FDIC supports and has no objection
13 to.

14 We have spoken with both Mr. Peck and
15 Mr. Spelfogel about the impact of that on the filing
16 deadline for a challenge by the FDIC to the bank account
17 transfer, and they are both agreeable to extending that
18 deadline until late January.

19 In the original 345 order there was a
20 provision that applied if either the FDIC wanted to seek
21 an extension or the debtor wanted to seek a reduction,
22 which contemplated filing of a motion, and after notice
23 and hearing the Court would rule on the request of
24 either party.

25 What we currently have is basically a

1 consensual extension of that deadline from the 24th of
2 December until late January, and I am inquiring of the
3 Court whether we could insert a paragraph in this
4 stipulation that extends that deadline with the other
5 extensions that are in the motion.

6 I realize that that deadline would not be
7 on notice to other parties, but this is not a deadline
8 that either is in the statute or in the bankruptcy
9 rules, but rather an arbitrary date that was agreed to
10 with the debtor and with Mr. Spelfogel.

11 So if the Court has no objection to that, I
12 think it keeps the parties amenable to confirming that
13 extension in the form of additional language to this
14 stipulation.

15 THE COURT: Mr. Peck, is that right?

16 MR. PECK: That's fine with us. It may
17 make more sense to actually put it in the order
18 approving the stipulation rather than the stipulation
19 itself, if Mr. Soll doesn't have an issue with that, but
20 certainly we are fine with that.

21 THE COURT: Mr. Soll?

22 MR. SOLL: That would be fine.

23 THE COURT: I have no objection. I agree
24 that this was a date the parties agreed to. No one else
25 is likely affected by this. So I am happy for the order

1 to extend that date.

2 MR. SOLL: Thank you very much.

3 MR. PECK: We will revise the order,
4 circulate it and then upload it.

5 THE COURT: All right.

6 MR. PECK: While we are on the topic of
7 housekeeping, we also have an issue with our exclusivity
8 period. It actually runs on Christmas Day which I guess
9 was poor planning on our filing date.

10 Applying Rule 9006 would actually give us a
11 few more days but would still leave us one day short of
12 our next omnibus hearing date. So I am not asking for
13 any relief today, but I did want to give you a heads up;
14 we are going to file a motion for posting the setting
15 prior to the holiday, and you will be able to review
16 that and let us know what you think.

17 THE COURT: Very well.

18 MR. PECK: That's all we have for today,
19 Your Honor.

20 THE COURT: Excellent. Thank you.

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1 CERTIFICATE

2 COUNTY OF LUBBOCK)

3 STATE OF TEXAS)

4 I, Cathy Sosebee, Certified Court Reporter in
5 and for the State of Texas, do hereby certify that the
6 foregoing pages contain a full, true and correct
7 transcript, to the best of my ability, of audiotape
8 furnished by the Clerk of the Bankruptcy Court.

9 Given under my hand this the 20th day of
10 December, 2009.

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